IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 830/2001
(Old No. 12468/1986)

M/s Krishna Rice & General Mills and others ……..…..Petitioners.

Vs.

Income Tax Officer and another ……...……...……Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri H.M. Bhatia learned for the petitioners and Sri S.K.Posti learned counsel for respondent No.1.

2- This is a petition under section 482 of Code of Criminal Procedure for quashing the proceedings of criminal case No. 1207/1986, which arose out of a complaint filed by respondent No.1 alleging concealment of the income by the petitioner assessee in relation to the assessment year 1982-83. Broad features of the case are that the income shown by the petitioner was not accepted by the Assessing Officer per assessment or order dated 30-7-1982. The petitioner went up in appeal before the Commissioner Income Tax which dismissed the same on 13.5.85. Thereafter, the petitioner preferred appeal before the Income Tax Appellate Tribunal, Delhi and the same had been decided by the order dated 30-6-1986 and the order of the Assessing Officer as well as the Appellate Authority were set aside. The petitioner was thus found not to have concealed the income for the above mentioned assessment year. Considering this aspect the criminal proceeding can not legally proceed for alleged concealment of the income.

3- Learned counsel for the respondent No.1 submitted that in a situation like this the petitioner should have preferred an application and put forward his case before the learned Magistrate where the criminal proceedings are pending against him. In my view it will be futile exercise because the final out-come had to be the rejection of the proceedings in criminal complaint and considering this the criminal proceedings can be quashed by invoking the power under section 482 of the Code of Criminal Procedure. Consequently the petition is allowed and the criminal proceedings in criminal case No. 1207/1986 are quashed.

(**Irshad Hussain, J.**)

Dated: 1-12-03
ISB